

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII**

In The Matter Of The Application Of

HAWAIIAN ELECTRIC COMPANY, INC.

**For Approval of Rate Increases and Revised Rate
Schedules and Rules, and for Approval and/or
Modification of Demand-Side and Load
Management Programs and Recovery of Program
Costs and DSM Utility Incentives**

DOCKET NO. 04-0113

PUBLIC UTILITIES
COMMISSION

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FILED

**MEMORANDUM IN OPPOSITION TO
COUNTY OF MAUI'S MOTION TO PARTICIPATE**

AND

CERTIFICATE OF SERVICE

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Utility Incentives

**MEMORANDUM IN OPPOSITION TO
COUNTY OF MAUI'S MOTION TO PARTICIPATE**

This Memorandum is respectfully submitted by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") in opposition to the County of Maui's ("COM") Motion to Participate, dated February 11, 2005 ("Motion")^{1, 2}

HECO opposes the Motion on the grounds that the Motion does not provide a statement of the relief requested (e.g., does not specify the extent to which COM desires to participate in this docket). For example, the Motion does not state (a) whether COM's participation will be limited to certain issues (it appears that COM wants to participate with respect to issues concerning HECO's demand-side management ("DSM") programs, including HECO's proposed mechanisms for DSM program cost recovery and to incent HECO to implement DSM programs),

¹ While the Motion is dated February 11, 2005, HECO did not receive the Motion until February 16, 2005. COM served the Motion on Maui Electric Company, Limited ("MECO"), who is not a party to this proceeding, but did not serve HECO's attorneys as directed to in the Application.

² On January 24, 2005, COM filed a motion for extension of time to intervene that requested an extension of three weeks to determine whether COM would be moving to intervene in this docket. The Commission has not yet ruled on COM's motion for extension of time.

and (b) to what extent COM wants to participate in this docket (e.g., filing of written testimonies, testifying and being subject to cross-examination at the evidentiary hearing, filing of post-hearing written briefs, etc.).

If the Commission finds that COM should be allowed to participate in this proceeding and that the Consumer Advocate would not adequately represent COM's interest involving HECO's proposed DSM programs, then COM's participation should be limited to the aspects of HECO's proposed DSM programs that may affect MECO's future DSM programs (e.g., the proposed mechanisms for DSM program cost recovery and to incent HECO to implement DSM programs). In addition, COM's participation should not be permitted to affect the schedule of proceedings or the statement of the general rate case issues, and COM should be required to comply with the Commission's Rules of Practice and Procedure.³

If COM is granted participant status with respect to the aspects of HECO's proposed DSM programs that may affect MECO's future DSM programs, then the parties (HECO and the Consumer Advocate) and any participants, and/or the Commission should establish a separate expedited schedule (with separate hearing date, if necessary) for such issue.

I. DISCUSSION

A. COM Does Not Have A Statutory Right To Participate In This Docket

The Motion is governed by the Commission's Rules of Practice and Procedure regarding participation without intervention. Participation without intervention to a proceeding before the Commission is not a matter of right but is a matter resting within the discretion of the Commission. H.A.R. §6-61-56(a) specifically states that "[t]he commission may permit

³ Title 6, Chapter 61 of the Hawaii Administrative rules ("H.A.R.") is referred to as the "Commission's Rules of Practice and Procedure".

participation without intervention.” (Emphasis added). The Commission exercises its discretion by determining whether or not a movant should be admitted as a participant in a proceeding.

In addition, the Commission needs to insure “the just, speedy and inexpensive determination of every proceeding,” which is the purpose of the Commission’s Rules of Practice and Procedure as stated in H.A.R. §6-61-1. However, the “just, speedy and inexpensive determination” of a proceeding cannot be accomplished if the Commission admits every movant as a participant (or a party).

B. COM Has Not Specified The Extent Of The Participation That It Is Requesting

The Motion requested participant (and not intervener) status. Under H.A.R. §6-61-56(c)(7), COM is required to provide the Commission with a “statement of the relief desired.” The Motion does not identify the relief that is being requested in the Motion (e.g., extent to which COM wants to participate in this docket). For example, the Motion does not state whether COM’s participation will be limited to certain issues, although it appears that COM wants to participate with respect to issues concerning HECO’s DSM programs, including HECO’s proposed mechanisms for DSM program cost recovery and to incent HECO to implement DSM programs.⁴ The Motion also does not state to what extent COM wants to

⁴ With respect to COM’s interest in this docket, the Motion (page 2) states that COM has an interest in the impacts the DSM resources would have on the public and the economy of Maui county. In addition, with respect to COM’s position regarding the matter in controversy, the Motion states “[COM’s] position in the instant proceeding is to ensure that DSM is aggressively pursued, whether or not lost revenue recovery and shareholder incentives are maintained” and that “COM’s position in the instant proceeding is to advocate consideration of alternative, non-utility DSM delivery mechanisms.” Motion at 2, 3.

COM does not allege that it has any interest in general rate case issues (revenues, expenses, rate base, rate of return, cost of service and rate design). Even if COM was seeking to participate with respect to general rate case issues (which does not appear to be the case), COM should not be permitted to participate with respect to general rate case issues. First, COM is not a HECO customer. As a result, the general rate case issues will not impact COM. (Even if it were found that

participate in this docket (e.g., filing of written testimonies, testifying and being subject to cross-examination at the evidentiary hearing, filing post-hearing written briefs, etc.). Instead, the Motion states that COM “cannot formulate a statement of the relief it desires, as its desired relief will be affected by the issues raised by the other parties to the docket”, and discusses the interests that COM will be promoting in this docket. See Motion at 4.

If the Commission finds that COM should be allowed to participate in this proceeding and that the Consumer Advocate would not adequately represent COM’s interest involving HECO’s proposed DSM programs, then COM’s participation should be limited to the aspects of HECO’s proposed DSM programs that may affect MECO’s future DSM programs (e.g., proposed mechanisms for DSM program cost recovery and to incent HECO to implement DSM programs). COM’s other interests in DSM programs are more appropriately addressed in MECO’s current Integrated Resource Planning process (in which COM is participating as a member of MECO’s IRP-3 Advisory Group), and in the subsequent proceeding to review the preferred integrated resource plan selected by MECO as a result of the IRP process.


In addition, COM’s participation should not be permitted to affect the schedule of proceedings or the statement of the general rate case issues, and COM should be required to comply with the Commission’s Rules of Practice and Procedure.

If COM is granted participant status with respect to the aspects of HECO’s proposed DSM programs that may affect MECO’s future DSM programs, then the parties (HECO and the

COM had an interest in HECO’s general rate case issues, which COM does not, COM’s interest in general rate case issues would be generally the same as that of the general public. Accordingly, COM’s interest in general rate case issues would be adequately represented by the Consumer Advocate. The Consumer Advocate is required under the Hawaii Revised Statutes to “represent, protect, and advance the interest of all consumers.” H.R.S. §269-51.) Second, COM has not

Consumer Advocate) and any participants, and/or the Commission should establish a separate expedited schedule (with separate hearing date, if necessary) for such issue.

DATED: Honolulu, Hawaii February 23, 2005.

A handwritten signature in black ink, appearing to read 'Tom Williams, Jr.', written over a horizontal line.

THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA

Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC.

demonstrated that it has any expertise, knowledge or experience with respect to general rate case issues. COM has not provided evidence that it has experience in utility rate case proceedings.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing

MEMORANDUM IN OPPOSITION TO COUNTY OF MAUI'S MOTION TO

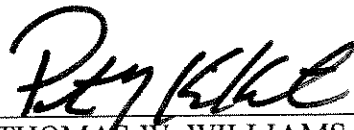
PARTICIPATE, together with this Certificate of Service, by hand delivery and/or by mailing a copy by United States mail, postage prepaid, to the following

Division of Consumer Advocacy (2)
Department of Commerce and Consumer Affairs
335 Merchant Street, Room 326
Honolulu, Hawaii 96813

Department of the Corporation Counsel
Brian T. Moto
Corporation Counsel
Cindy Y. Young
Deputy Corporation Counsel
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Attorneys for County of Maui

DATED: Honolulu, Hawaii, February 23, 2005

A handwritten signature in black ink, appearing to read 'Peter Y. Kikuta', written over a horizontal line.

THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA

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